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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/801,231

03/16/2004

Weenna Bucay-Couto

03-205

2019

27774 7590 08/14/2008

MAYER & WILLIAMS PC  
251 NORTH AVENUE WEST  
2ND FLOOR  
WESTFIELD, NJ 07090

EXAMINER

DOWE, KATHERINE MARIE

ART UNIT

PAPER NUMBER

3734

MAIL DATE

DELIVERY MODE

08/14/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/801,231	<b>Applicant(s)</b> BUCAY-COUTO ET AL.	
	<b>Examiner</b> KATHERINE M. DOWE	<b>Art Unit</b> 3734	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 May 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) 24-29 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. The following is a complete response to the amendment filed 5/15/2008.
2. Claims 1-23 are currently pending with claims 24-29 withdrawn from consideration.

### ***Claim Rejections - 35 USC § 102/103***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 1, 2, 5, 6, 11-16 and 18-23 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Sawhney et al. (6,379,373).

Sawhney et al., in the embodiment of figure 3, disclose the steps of injecting a fluid (one of the prepolymer solutions described from col. 9, line 67 to col. 10, line 3) comprising a crosslinkable polymer into a container 46 that is positioned within a subject, crosslinking (i.e. partially crosslinking) said crosslinkable polymer in said container (noting the phrase “begin crosslinking in chamber 46” in col. 10, line 3), thereby forming a (partially) crosslinked solid polymeric body in the container 46 and releasing said crosslinked polymeric body into the subject (col. 10, lines 3-5). Alternatively, it would have been obvious that the polymeric body in the container 46 is “crosslinked” since it is partially crosslinked. As to claim 2, container 46 is inherently expandable to some extent since it is made of flexible material (col. 9, line 55). As to claim 15, note col. 3, lines 29-35 of Sawhney et al. As to claim 20, note col. 11, lines 30-32 of Sawhney et al.

5. Claims 3, 4, 7-10 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sawhney et al. (6,379,373). As to claims 3 and 4, the Sawhney et al. specification is silent as to

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whether the container walls are inelastic or elastic. However, it is old and well known in this art to make catheter walls either (1) inelastic or (2) elastic in order to obtain the advantage of making the container (1) strong or (2) expandable to accommodate fluid material therein. It would have been obvious to make the Sawhney et al. container walls either inelastic or elastic so that it too would have these advantages. As to claim 7, Sawhney et al. fails to disclose releasing the container along with the crosslinked polymeric body within the patient. However, it is old and well known in this art for practitioners to at least momentarily manually release a catheter from their grip in order obtain the advantage of enabling the practitioner to perform other procedures. It would have been obvious to release the Sawhney et al. catheter 40 (along with the container and the crosslinked polymeric body) while it is within the patient in order to obtain this advantage. As to claims 8-9, Sawhney et al. fails to disclose the container 46 as being biodegradable. However, it is old and well known in this art to make devices biodegradable in order obtain the advantage of making them easily disposable. It would have been obvious to make the container 46 biodegradable so that it too would have this advantage. As to claims 10 and 17, Sawhney et al. fails to disclose washing and the particular artery claimed. However, it is old and well known in this art to wash polymeric bodies and to occlude the particular artery claimed. It would have been obvious to wash the Sawhney et al. polymeric body and occlude the particular artery claimed for these reasons.

***Response to Arguments***

6. Applicant's arguments filed 5/15/2008 have been fully considered but they are not persuasive. Applicant argues Sawhney's partially formed gel that is extruded through outlet ports is not a "solid" polymeric body. The Examiner respectfully traverses the Applicant's remarks. In the embodiment of Figure 3, Sawhney teaches it is desirable to inject fluid comprising crosslinkable polymer into a mixing container *in situ* to begin crosslinking the polymer before delivering the polymer to the body (col 10, ln 11-12). The partially-formed gel has sufficient mechanical integrity to remain in position in the body lumen once it is delivered from the container (col 10, ln 17-20). Thus, the partially-formed gel may be considered a solid since it is able to maintain its shape and not spread throughout the body lumen as a liquid would do to conform to the shape of its container.

***Conclusion***

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to KATHERINE M. DOWE whose telephone number is (571)272-3201. The examiner can normally be reached on M-F 8:30am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on (571) 272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kevin T. Truong/  
Primary Examiner, Art Unit 3734

Katherine Dowe  
August 10, 2008

/K. M. D./  
Examiner, Art Unit 3734